


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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UNION OF ORTHODOX JEWISH)	
CONGREGATIONS OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO. 2:05-CV-
)	00377-FCD-DAD
v.)	
)	
SUN FLOUR BAKING COMPANY)	
)	
Defendant.)	
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CONSENT ORDER

Plaintiff Union of Orthodox Jewish Congregations of America (“Orthodox Union”) and Defendant Sun Flour Baking Company (“Sun Flour”) have agreed to the entry of this Consent Order. Accordingly, the Court finds, concludes, and orders as follows:

1. Plaintiff Union of Orthodox Jewish Congregations of America (“Orthodox Union”) is the sole and exclusive proprietor of the kosher certification mark  (the “OU mark”). The OU mark has been used on hundreds of thousands of foods and beverages, and related products and services, as an indicator that such products have been certified as kosher by the Orthodox Union. The OU mark has achieved a high degree of consumer recognition and has become famous as the most widely recognized indicator of kosher foods throughout the world. The OU mark is federally registered and incontestable.

2. As a result of the Orthodox Union’s promotional efforts, licensing practices, and stringent certification standards, the OU mark has an extraordinary reputation in connection with foods, beverages, and related products and services, and consumers have come to associate the OU mark with the Orthodox Union.

3. Defendant Sun Flour manufactures various baked products.

4. Defendant has sold goods using the OU mark, or a mark confusingly similar thereto, but is not authorized to use the OU mark.

5. As of February 2005, Defendant's products bearing the OU mark were still being sold to the public.

6. As a result of Defendant's action, consumers have undoubtedly purchased the Defendant's products under the mistaken belief that such products were certified as kosher by the Orthodox Union.

7. Defendant's conduct causes a likelihood of confusion, and also has potentially caused kosher consumers to unwittingly violate their religious beliefs.

Accordingly, it is hereby:

ORDERED, that Sun Flour, and all those persons in active concert or participation with them who receive actual notice of this injunction, are hereby enjoined and restrained from using the OU mark, or any mark confusingly similar thereto such as that currently appearing on Defendant's products, in any unauthorized manner, and from manufacturing, selling, offering to sell, advertising, licensing, reproducing, or in any other way participating in the distribution of products that bear the OU mark, or any mark confusingly similar thereto; and it is further

ORDERED, that Sun Flour shall utilize its best efforts to recall all Sun Flour products bearing the OU mark, or any mark confusingly similar thereto such as that currently appearing on Defendant's products, from any and all distributors, wholesalers, jobbers, dealers, retailers, and any other persons known to Sun Flour to have possession of such products. Such "best efforts" shall include (1) phone calls to regular buyers to identify remaining product with the

confusingly similar mark and placing stickers over the mark on that product to mask the mark;
(2) supply sales person with supply of stickers to place over mark on any product found to bear the mark during her sales calls to customers and, (3) a flyer included with future shipments to each retailer asking that retailer to inspect on-shelf product for the mark and to inform Sun Flour if any is found; and it is further

ORDERED, that Sun Flour shall, within five (5) days of the date of this order, destroy all of its packaging material bearing the OU mark, or any mark confusingly similar thereto such as that currently appearing on Defendant's products, or otherwise excise the OU mark from such packaging; and it is further

ORDERED, that Sun Flour shall, within five (5) days from the date of this order, promptly remove the OU mark, or any mark confusingly similar thereto such as that currently appearing on Defendant's products, from any of its advertising.

ORDERED, the parties shall submit a dismissal documents within 30 days of the date of this order.

SO ORDERED this 12th day of May, 2005

/s/ Frank C. Damrell Jr.
United States District Judge

Seen and Agreed:

/s/

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